

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KYLE GIANIS,

Defendant.

NO. CR04-334JCC

GOVERNMENT'S RESPONSE TO  
DEFENSE MOTION FOR  
DISCOVERY; CROSS-MOTION FOR  
PROTECTIVE ORDER

**I. INTRODUCTION**

The United States of America respectfully submits this response to Defendant's Motion for pre-deposition discovery (Dkt. # 26). The government intends to fully comply with all of its discovery obligations, including producing any *Jenks* act materials prior to the deposition in this case.

However, the government does have legitimate safety concerns about the witnesses in this case. First, defendant has a history of violent acts. Second, defendant recently caused someone to improperly contact one of the witnesses, despite the fact that the witness is represented by counsel.

Accordingly, the Court should enter a protective order authorizing the government to redact any personally identifying information pertaining to these witnesses (other than their names), or, in the alternative, prohibiting defense counsel from providing copies of

1 any material tending to identify the witnesses addresses, employment, and the like.

2 **II. BACKGROUND.**

3 **A. Factual and Procedural History.**

4 The background of this case is set forth in prior moving papers and will not be  
5 repeated here in the interests of brevity. The procedural background is accurately set  
6 forth in defendant's motion, and therefore will not be repeated for the same reason. The  
7 depositions are currently set in Canada for May 14 and May 15.

8 **B. Defendant's Attempt to Contact Witness Youngberg.**

9 As outlined in the undersigned AUSA's prior declaration in support of the Motion  
10 to Schedule depositions (Dkt. # 14), the undersigned spoke with defendant's original  
11 counsel, John Henry Browne, on or about March 7, 2008. During that conversation,  
12 Mr. Browne told the undersigned that defendant's Canadian "lawyer" had determined that  
13 neither witness would come down to the United States to testify.

14 During that conversation, the undersigned specifically advised Mr. Browne that  
15 Mr. Youngberg, at least, was still represented by the Federal Public Defender's office,  
16 and that contact with the witness should likely be coordinated through his counsel. A  
17 subsequent conversation with Mr. Youngberg's counsel, AFPD Nancy Tenney,  
18 established that no such contact had occurred as of March 7.

19 However, and despite that warning, Gianis' representatives have made concerted  
20 attempts to have direct contact with Mr. Youngberg. According to Ms. Tenney, a lawyer  
21 for Mr. Gianis contacted Mr. Youngberg recently. Attached as Exhibit 1 is an email from  
22 Ms. Tenney to Mr. Browne alerting him of the violation of the ethical rules, and objecting  
23 to further attempts to contact her client. This incident is currently under investigation.

24 As to Mr. Tsoukalas, the government has had no direct or indirect contact with him  
25 since the motion to continue, and it is unknown whether the defense has attempted to  
26 contact him and/or whether Mr. Tsoukalas is represented.

### III. ARGUMENT AND AUTHORITY

#### A. **The Government Will Comply with Its Discovery Obligations.**

The government intends to produce virtually all of the materials requested in the defense motion in advance of the depositions, including the Plea Agreements and the notes and reports of the witnesses' interviews. Some, but not all, of the notes and reports have already been produced, and the remainder will be produced by the end of next week at the latest. The government is also prepared to produce the Plea Agreements, which are currently under seal, once the court unseals them.

Regarding the Presentence Reports, the government cannot, of course, release them without the Court's prior approval. Presentence reports belong to the Court, and in the undersigned's experience, it would be unusual for the government to simply turn over a PSR for one defendant to a different defendant. However, the government intends to review the PSRs in advance of the depositions, and to advise the defense of any *Jenks* or *Brady* material contained in the PSRs. If the Court desires a different procedure the government will of course comply with the Court's wishes.

Finally, the defense has requested criminal histories for both witnesses. The government will provide the defense with the criminal history material contained in the PSRs, which should be complete up through the date of their sentencing. The government is currently attempting to also secure the RCMP equivalent of a "rap sheet" for each witness. However, the United States cannot of course compel the Canadian government to turn over this information, and cannot be held responsible if the Canadian government declines to do so.

#### B. **Cross-Motion for a Protective Order.**

As set forth in prior pleadings, Mr. Gianis has a history of violent incidents. Recently, he appears to have attempted to contact a represented witness, despite the fact that his U.S. counsel was specifically advised that the witness was represented by

counsel.<sup>1</sup>

Accordingly, the United States respectfully requests the following relief pursuant to Fed. R. Crim. P. 16(d)(1). :

1. That the Court issue an order prohibiting Kyle Gianis or his agents or attorneys from directly or indirectly contacting any represented witness without their counsel's prior written approval.

2. That the Court authorize the government to redact all personally identifying information as to both witnesses, other than their names, from any materials produced forthwith. In the alternative, the Court should prohibit defense counsel from providing copies and from showing Gianis any discovery material containing personally identifying information to defendant.

#### IV. CONCLUSION

The government intends to comply with its discovery obligations. However, all discovery should be conducted in a fashion that protects the witnesses from possible pressure or retaliation.

DATED this 2nd day of May, 2008.

Respectfully submitted,

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<sup>1</sup> The United States does not suggest, and has no information indicating, that Mr. Camiel was even aware of this attempt, much less authorized it.

CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s). I hereby certify that I have served the attorney(s) of record for the defendant(s) that are non CM/ECF participants via telefax.

s/ Stephanie J. Orona  
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